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SENATE BILL 303

**49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009**

INTRODUCED BY

Michael S. Sanchez

AN ACT

RELATING TO THE NEW MEXICO OCCUPATIONAL DISEASE DISABLEMENT  
LAW; REQUIRING CERTAIN DISEASES AND INJURIES TO BE PRESUMED TO  
BE CAUSED BY EMPLOYMENT FOR CERTAIN FIREFIGHTERS;  
PROVIDING EXCEPTIONS; ESTABLISHING BURDEN OF PROOF FOR  
DEFENSES; REQUIRING WORKERS' COMPENSATION REIMBURSEMENT IN  
CERTAIN SITUATIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the New Mexico Occupational  
Disease Disablement Law is enacted to read:

"NEW MATERIAL FIREFIGHTER OCCUPATIONAL DISEASE.--

A. As used in this section, "firefighter" means a  
person who is employed as a full-time non-volunteer firefighter  
by the state or a local government entity and who has taken the  
oath prescribed for firefighters.

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1           B. If a firefighter is diagnosed with one or more  
2 of the following diseases after the period of employment  
3 indicated, which disease was not revealed during an initial  
4 employment medical screening examination or during a subsequent  
5 medical review pursuant to the Occupational Safety and Health  
6 Act and rules promulgated pursuant to that act, the disease is  
7 presumed to be proximately caused by employment as a  
8 firefighter:

- 9                   (1) brain cancer after ten years;
- 10                   (2) bladder cancer after twelve years;
- 11                   (3) kidney cancer after fifteen years;
- 12                   (4) colorectal cancer after ten years;
- 13                   (5) non-Hodgkin's lymphoma after fifteen  
14 years;
- 15                   (6) leukemia after five years;
- 16                   (7) ureter cancer after twelve years;
- 17                   (8) testicular cancer after five years if  
18 diagnosed before the age of forty with no evidence of anabolic  
19 steroids or human growth hormone use;
- 20                   (9) breast cancer after five years if  
21 diagnosed before the age of forty without a breast cancer 1 or  
22 breast cancer 2 genetic predisposition to breast cancer;
- 23                   (10) esophageal cancer after ten years;
- 24                   (11) multiple myeloma after fifteen years; and
- 25                   (12) hepatitis, tuberculosis, diphtheria,

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1 meningococcal disease and methicillin-resistant staphylococcus  
2 aureus appearing and diagnosed after entry into employment.

3 C. The presumption created in Subsection B of this  
4 section may be rebutted by a preponderance of evidence in a  
5 court of competent jurisdiction showing that the firefighter  
6 engaged in conduct or activities outside of employment that  
7 posed a significant risk of contracting or developing a  
8 described disease.

9 D. If a firefighter is diagnosed with a heart  
10 injury or stroke suffered within twenty-four hours of fighting  
11 a fire, while responding to an alarm, while returning from an  
12 alarm call, while engaging in supervised physical training or  
13 while responding to or performing in a non-fire emergency, the  
14 heart injury or stroke is presumed to be proximately caused by  
15 employment as a firefighter. The presumption created in this  
16 subsection shall not be made if the firefighter's employer does  
17 not have a current physical training program and the  
18 firefighter does not have a current medical screening  
19 examination or review pursuant to the Occupational Health and  
20 Safety Act and rules promulgated pursuant to that act allowing  
21 participation in that program.

22 E. The presumptions created in this section shall  
23 not preclude a firefighter from demonstrating a causal  
24 connection between employment and disease or injury by a  
25 preponderance of evidence in a court of competent jurisdiction.

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F. Medical treatment based on the presumptions created in this section shall be provided by an employer as for a job-related illness or injury unless and until a court of competent jurisdiction determines that the presumption does not apply. If the court determines that the presumption does not apply or that the illness or injury is not job related, the employer's workers' compensation insurance provider shall be reimbursed for health care costs by the medical or health insurance plan or benefit provided for the firefighter by the employer."

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2010.